

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 1:04CR496
)	
ROBERT GEOFFREY LAYNE,)	
)	
Defendant.)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, and Dana J. Boente and Charles F. Connolly, Assistant United States Attorneys, and Adam A. Reeves, Trial Attorney, Criminal Division, United States Department of Justice, and the defendant, Robert Geoffrey Layne, and the defendant's counsel, Jonathan Feld, Esq. and Nina Ginsberg, Esq. have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

1. Offense and Maximum Penalties

The defendant, Robert Geoffrey Layne, agrees to waive indictment and plead guilty to a single count criminal information charging the defendant with securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff and 17 C.F.R. § 240.10b-5. The maximum penalties for this offense are a maximum term of ten years of imprisonment, a fine of \$1,000,000, full restitution, a special assessment, and three years of supervised release. The defendant understands that this supervised release term is in addition to any prison term the defendant may receive, and that a

violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

3. Assistance and Advice of Counsel

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

4. Role of the Court and the Probation Office

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with the Sentencing Guidelines and Policy Statements.

The defendant understands that the Court has not yet determined a sentence and that any estimate of the probable sentencing range under the sentencing guidelines the defendant may have received from the defendant's counsel, the United States or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

5. Joint Recommendation

The United States and the defendant agree to recommend to the Court the following under the Sentencing Guidelines and Policy Statements in effect as of November 1, 2000:

- (a) The parties agree under U.S.S.G., Section 2F1.1 that:
 - a. the applicable loss amount under U.S.S.G., Section 2F1.1(b)(1) is approximately \$6.7 million, resulting in an fourteen-point offense level increase;
 - b. the defendant's conduct warrants a two-point increase in the offense level for more than minimal planning, pursuant to U.S.S.G., Section 2F1.1(b)(2).
- (b) The parties agree that defendant's conduct warrants a two-point increase in the offense level for the defendant's aggravating role as a manager or supervisor in a criminal activity, pursuant to U.S.S.G., Section 3B1.1(c).
- (c) The parties agree that defendant's conduct warrants a two-point increase in the offense level for abuse of trust pursuant to U.S.S.G., Section 3B1.3.
- (d) The parties agree that defendant's conduct warrants a two-point increase in the offense level based on the defendant willfully obstructing the

administration of justice during the course of an investigation by the Federal Bureau of Investigation of the instant offense of fraud and the defendant's obstructive conduct related to defendant's conviction of fraud and his relevant conduct, pursuant to U.S.S.G., Section 3C1.1.

As long as Probation recommends acceptance of responsibility and the defendant abides by this Plea Agreement, the United States will not oppose a two-point decrease under U.S.S.G., Section 3E1.1(a) and agrees to move the Court for an additional one-point decrease under U.S.S.G., Section 3E1.1(b). Notwithstanding the foregoing, the parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Sentencing Guidelines and Policy Statements that should result in a sentence different from the range determined by the Court. Accordingly, the parties agree not to seek or support any departure from or sentence outside of the Court-determined guideline range for any reason not set out explicitly in this agreement. Except as provided in paragraph 5 of this Plea Agreement, the United States and the defendant have no other agreements as to the applicability of any other portions of the Sentencing Guidelines and Policy Statements.

6. Waiver of Appeal and Review

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not

affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

7. Special Assessment

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

8. Payment of Monetary Penalties

The defendant understands and agrees that, pursuant to Title 18, United States Code, Section 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

9. Restitution for Offense of Conviction

The defendant agrees to the entry of a Restitution Order for the full amount of the victim's losses. At this time, the Government is aware that the following victim has suffered the following losses:

<u>Victim</u>	<u>Amount of Loss</u>
PurchasePro.com	\$6.7 million

10. Immunity from Further Prosecution in this District

The United States will not further criminally prosecute defendant in the Eastern District of Virginia for the conduct relating to and described in the criminal information or statement of facts. Except where specifically noted, this Plea Agreement binds only the United States Attorney's Office for the Eastern District of Virginia, the United States Department of Justice, Criminal Division and the defendant; it does not bind any other prosecutor in any other jurisdiction.

11. Defendant's Cooperation

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government. In that regard:

- a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.
- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences in the Eastern District of Virginia as the United States may require.

- c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.
- d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice.
- e. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.
- f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.
- g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

12. Use of Information Provided by the Defendant Under This Agreement

Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested. Nothing in this plea agreement, however, restricts the Court's or Probation Office's access to information and records

in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

13. Prosecution in Other Jurisdictions

The United States Attorney's Office for the Eastern District of Virginia will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the United States Attorney's Office for Eastern District of Virginia agrees, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

14. Defendant Must Provide Full, Complete and Truthful Cooperation

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

15. Motion for Downward Departure

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

16. Payment of Taxes and Filing of Tax Returns

The defendant consents to any motion by the United States under Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure, to disclose grand jury material to the Internal Revenue Service for use in computing and collecting the defendant's taxes, interest and penalties, and to the civil and forfeiture sections of the United States Attorney's Office for use in identifying assets and collecting fines and restitution. The defendant also agrees to file true and correct tax returns for the years 1999 through 2002 within sixty days and to pay all taxes, interest and penalties for the years 1999 through 2002 within a reasonable time in accordance with a plan to be devised by the Probation Office. The defendant further agrees to make all books, records and documents available to the Internal Revenue Service for use in computing defendant's taxes, interest and penalties for the years 1999 through 2002.

17. Breach of the Plea Agreement and Remedies

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit

any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and
- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.


18. Nature of the Agreement and Modifications

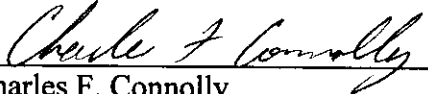
This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any

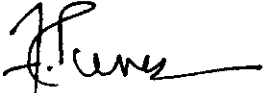
modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Respectfully submitted,

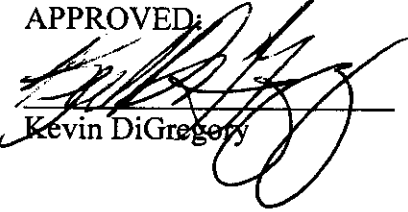
Paul J. McNulty
United States Attorney

By: 
Dana J. Boente
Assistant United States Attorney

By: 
Charles F. Connolly
Assistant United States Attorney

By: 
Adam A. Reeves
Trial Attorney, Criminal Division
United States Department of Justice

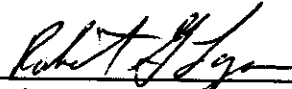
APPROVED:


Kevin DiGregory

Date: 1/3/05

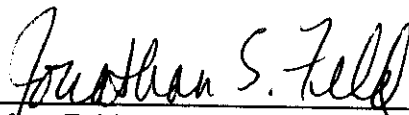
Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to the provisions of the *Sentencing Guidelines and Policy Statements* which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

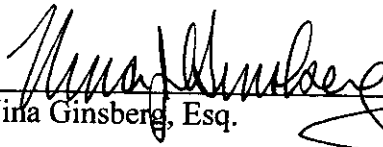
Date: _____


Robert Geoffrey Layne

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending criminal information. Further, I have reviewed the provisions of the *Sentencing Guidelines and Policy Statements* and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____


Jonathan Feld, Esq.


Nina Ginsberg, Esq.

Plea Agreement (Revised April 30, 2003)